THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.15539 of 2006

Dated: 24.08.2006

Between:

Sri Bagada Gangaraju S/o Sri Pedda Pullanna
R/o H.No.6-137, Eswarareddy Nagar,
Proddatur Mandal, Kadapa District.

... **PETITIONER**

And:

The Superintendent & Executive Engineer,
Sri Agastheswara swami Devasthanam,
Proddatur Town, Kadapa District and others.

...**RESPONDENTS**

THE HON'BLE SRI JUSTICE GODA RAGHURAM

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ORAL ORDER:

The writ petition is filed assailing Clause (2) of the auction notice, dated 05.07.2006, issued by the Executive Officer of Sri Agastheswaraswami Devasthanam, Proddatur Town, Kadapa District. This clause is assailed as being arbitrary, unfair and violative of Article 14 of the Constitution of India. Petitioner also seeks a direction to the respondents to put him in possession of shop No.9/509 of the Devasthanam.

The first respondent invited tenders for grant of lease of a shop in Door No.9/509 of the Devasthanam, vide the auction notice dated 05.07.2006. Auction was conducted on 07.07.2006, for a lease tenure

of three years. Petitioner participated in the auction and became the highest bidder, quoting an amount of Rs.7,550/- per month as the lease amount. Petitioner deposited Rs.25,000/- as earnest money deposit in terms of clause(1) of the auction notice. After the auction, he also deposited a month's rent. When the respondents insisted that the petitioner should deposit Rs.6,00,000/- as required under clause (2) of the auction notice, he made representations to the respondents and to the concerned Minister of the State Government pleading his incapacity to deposit Rs.6,00,000/-. As the respondents were still insisting on deposit of Rs.6,00,000/- in terms of clause (2) of the auction notice, the petitioner instituted this writ petition impeaching the validity clause(2) of the auction notice.

Clause (2) of the auction notice reads as under (translation);

" It is decided that immediately on conclusion of the auction, the highest bidder shall deposit an amount of Rs.6,00,000/- as donation for the improvements to the Devasthanam."

Learned counsel for the petitioner contends that this clause is inconsistent with Rules 5,6 and 12 of the Statutory Rules governing grant of leases of immovable properties of Hindu Religious Institutions and Endowments.

The relevant rules are the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable properties and other rights (other than agricultural lands) leases and licences Rules, 2003 (for short "the Rules"). The Rules were issued in G.O.Ms.No.866 Revenue (Endowments-I) Department, dated 08.08.2003 by the State Government in purported exercise of powers under Section 82 read with Section 153 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987. Rule 5 enacts that the Executive Authority of the Institution may, subject to the provisions of the Rules and the instructions issued by the

Commissioner from time to time in this behalf, decide the terms and conditions of the lease or licence. Enumeration of the several matters that may be incorporated in the terms and conditions of the lease, specified in Rule 5 are omitted herein, as those are not relevant for determination of the lis herein. The several conditions enumerated in Rule 5 are those that may be incorporated in the terms and conditions to be specified by the Executive Authority of the Institution. As the Rule has employed the expression "such as", it is clear that the legislative intent underlying the prescription is that the seven enumerations in Rule 5 are illustrative of the terms and conditions that may be incorporated while granting any lease, by the Executive Authority of the Institution and subject to instructions issued by the Commissioner, if any, from time to time. The enumerations of the conditions are not exhaustive of the factors that may be incorporated in the terms and conditions. Illustrative instructions are never to be construed as exhaustive directives. These principles are too well settled in statutory interpretation to invite an idle parade of familiar legal principles.

Rule 6 also specifies what the auction notice may specify. Here also the mandate is *inter alia.* Therefore, apart from the enumerations in Rule 6, the Executive Authority issuing the auction notice may enumerate other factors in the auction notice and still be within his lawful authority and discretion, under Rule 6. Of course, the terms and conditions of the lease or the specifications in the auction notice leading to the proposal for grant of a lease, recommended by the Executive Authority of the Religious Institution are subject to the over all supervision of the Commissioner of Endowments, who is the Chief Executive Officer, who has the overarching power, authority and obligation to implement the provisions of the Act for effectuation of its legislative purposes. Rule 12 reiterates such power, authority and jurisdiction of the Commissioner though it specifies the authorities

competent to confirm or reject leases or licences, which are proposed by the Executive Authority of Religious Institutions. This is apart from the overall supervisory jurisdiction inherent in the Commissioner of Endowments under the provisions of the Act.

Neither on principle or authority nor in the context of spectrum of power and discretion conferred on the Executive Authority of the Devasthanam, is the impugned Clause of the auction notice arbitrary, illegal or beyond the jurisdiction of the first respondent.

Another contention urged on behalf of the petitioner is that there is an ambiguity in Clause (2). It is contended that since the expression used (in Telugu) is donation, the payment of Rs.6,00,000/- cannot be treated as compulsive. Donation is a volitional act and clause (2) makes the deposit of Rs.6,00,000/- compulsive.

The aforesaid hyper-technical argument does not commend acceptance. The interpretation of an instrument is not permitted by a lexicographic exposition of a single word. The entire clause should be treated as one unit for interpretation. So read, it is clear that for the development programmes of the Devasthanam, the Executive Authority has specified that every successful bidder should deposit Rs.6,00,000/-. Such deposit is a part of the consideration for grant of the lease, apart from the earnest money deposit specified in Clause (1). Every bidder is presumed to have read and agreed to these terms of the auction notice, that on becoming a successful bidder he is required to deposit Rs.6,00,000/-. The petitioner has consciously bid for the leasehold rights of the shop. The applicable principle is caveat emptor. The petitioner is no exception to this principle.

There are no merits in the writ petition. It is accordingly dismissed at the admission stage. There shall be no order as to costs.

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24.08.2006

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